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Dash For Agreement: Temporary Accommodation or Lasting Settlement?

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Abstract

The same dilemma remains for those in Northern Ireland today who genuinely want peace, reconciliation, and stability, but who at the same time see in what is termed the peace process, if not deceit, then much glossing over, a lot of ambiguity, and a deal of bad history. In 1921 the new institutions in Northern Ireland, the regional government and Parliament began life under the fiercest onslaught from Irish nationalism, both within its own boundaries and from the rest of the island. It was also critical of the early peace process under which John Hume of the SDLP had commenced dialogue with the representative of terrorism, Gerry Adams, and also under which democratic governments in London and Dublin were preparing to negotiate, or were already negotiating, with minority terrorist groups that they had long vowed to pursue relentlessly. The closing of nationalist ranks, including the Dublin Government, SDLP and Irish- America behind Sinn Fein in pressurising the British Government to accommodate Republican demands, meant the broader dialogue on a settlement in Northern Ireland was submerged in “conflict resolution” between a minority terrorist group and the British state.

DASH FOR AGREEMENT: TEMPORARY ACCOMMODATION OR LASTING SETTLEMENT?

Dennis Kennedy*

If deceit is acceptable to win a war, why should it not be equally acceptable, say, to preserve a peace, asked Conor Cruise O'Brien in his introduction to *Writers and Politics*.¹ He was discussing the role of the intellectual in society in the 1960s, with particular reference to the Cold War. Much more recently, the Nigerian Nobel Prize-winning playwright, Wole Soyinka, posed a similar question in a different context when he asked to what extent, if any, should the past be glossed over for the sake of social tranquillity here and now.² The same dilemma remains for those in Northern Ireland today who genuinely want peace, reconciliation, and stability, but who at the same time see in what is termed the peace process, if not deceit, then much glossing over, a lot of ambiguity, and a deal of bad history.

Northern Ireland has not, in recent years at least, suffered from a lack of intellectual attention. It has proved an accessible laboratory for conflict theorists, peace scholars, students of identities, and urban guerrilla specialists. Northern Ireland has offered the chance to study, in the context of a late twentieth-century Europe moving towards integration, a problem with more than faint echoes of the religious wars of the distant past.

No one in Ireland, North or South, readily takes upon himself the title of intellectual, for to do so invites immediate inclusion in what the late Spiro Agnew termed that "effete corps of impudent snobs,"³ or, in the more gentle parlance of the island, to be deemed "badly out of touch." However, the greatly increased output of academic analysis of the Irish situation over the past quarter of a century, from the disciplines of history, political science, and economics, has produced at least some assessments of the problem. These assessments are more intellec-

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1. CONOR CRUISE O'BRIEN, *WRITERS AND POLITICS* at xvii (1965).

2. WOLE SOYINKA, *THE BURDEN OF MEMORY, THE MUSE OF FORGIVENESS* (1998).

3. Spiro Agnew, Speech in New Orleans, Louisiana (Oct. 19, 1969).

tually objective than overtly political, even if, as Thomas Mann has reminded us, every intellectual attitude is latently political.

When the seemingly interminable crisis extended into the 1990s and thus into a third decade, with continued terrorist violence and worsening community relations, some observers became increasingly persuaded that one reason for this state of affairs was that too many interpretations were obscuring the real issues, and that received wisdom and official policy were based on an incorrect analysis of the problem and its origins and was, in fact, tending to prolong instability rather than end it. Sharing these concerns was a small group in Belfast who, familiar with one another's published work, though not otherwise linked personally or politically, had come together for regular discussion of the problem. They included specialists in Irish history and politics, in economics, in the European Union, and in public administration. Their original intention was to inform themselves and one another through discussion, but they soon realized that if they were to make any contribution to resolving the problem, they would have to enter public debate. This they did through the publication of pamphlets under the name of the Cadogan Group.⁴

The Group saw, and still sees itself as independent in that, as a group, it has no links to any political party, and because it has not collectively committed itself to the upholding of any particular political viewpoint. As the Group put it, perhaps somewhat pompously, in its first pamphlet published in 1992,⁵ the Group's primary concern was "to hold to realism and discard any analysis or agenda stemming primarily from either a nationalist or a unionist philosophy." But the Group also stated that its members had been brought together by a common concern that Government policy in Northern Ireland was based on an incorrect assessment of the problem and its origins, which drew too readily on a nationalist or neo-nationalist analysis. This errone-

4. The original members of the Group were Arthur Aughey (political scientist), Paul Bew (political scientist), Arthur Green (retired public servant), Graham Gudgin (economist), Dennis Kennedy (historian and European affairs expert), and Patrick Roche (economist). The group was named after the address at which its members first met, not directly after the fifth Earl Cadogan, Lord Lieutenant of Ireland, 1895-1902.

5. *Northern Limits: Boundaries of the Attainable in Northern Ireland Politics* (visited Jan. 31, 1999) <<http://www.cadogan.org/cadogan/pamps/north.html>> (on file with the *Fordham International Law Journal*).

ous analysis was widespread, and largely unchallenged among observers and commentators in Britain, the Republic, North America, and continental Europe.

This frank rejection of the nationalist approach inevitably drew accusations of unionism upon the Group, but as articulated in the Group's publications, it was based on the sheer unsustainability of much of the traditional nationalist case. Taking the base line of the present problem as the partition of Ireland in 1921 to satisfy the conflicting claims of a majority for independence for the island and of a substantial and concentrated minority demanding maintenance of the existing state, the United Kingdom of Great Britain and Ireland, partition could be seen as a reasonable, if not entirely satisfactory, solution.

Much recent writing of Irish history has taken this view, but the Group felt that it was useful to try to insert it into the then current political debate. It argued that the nationalist case, that the people of the island constituted an Irish nation with a right to ownership of the island and that partition was therefore unjust and undemocratic, rested on an outdated concept of nationhood belonging more to the nineteenth century than to the twenty-first century. In the case of Ireland, the Group argued that there was a territorially-based nationalism that was even more difficult to sustain. The argument that the line of partition was artificially drawn to guarantee a unionist majority in Northern Ireland simply indicates the fatuity of much nationalist polemic—of course it was drawn to give a unionist majority because that was the whole point of partition.

Partition left unhappy minorities on both sides of the border, as many European borders have done in the course of the twentieth century. In southern Ireland the unionist minority either left or ceased being unionist and accepted their new status as Irish citizens. In Northern Ireland the proportionately larger nationalist minority refused to accept the legitimacy of the state in which they found themselves, initially refused to participate in its institutions, and then organized themselves politically with the principal aim of dismantling the state.

Across the patchwork of European states in the twentieth century numerous minorities—ethnic, linguistic, and religious—have accommodated themselves to living on the wrong sides of borders. Their efforts, and the efforts of European states and

international organizations, have been dedicated to easing the lot of isolated minorities and to guaranteeing their civil and other rights, not to redrawing borders and dismantling states. This process of assimilation or accommodation did not happen in Northern Ireland, or at least happened only to a limited extent. Various factors worked against it. One has been the territorial nature of Irish nationalism; the concept of Irishness has been strongly linked to the island, personified in titles such as *Caithleen ni Houlihaun*, *Dark Rosaleen*, or the *Shan Van Vocht*. The romantic attachment has been more explicitly to the physical island than to nationhood, the island being more demonstrably separate and distinct than the mixed peoples of the two islands sharing—race, language, and, broadly speaking, religion—could ever be.

The fact that the disputed territory was on the island of Ireland, and physically separated from the rest of the state of which it was a part, added a superficial validity to the nationalist claim and made the problem in Ireland unlike other territorial disputes in Europe. Another major difference was that within the disputed territory the secessionists were in a minority, a fact that has been confirmed by repeated democratic elections over half a century. Thus, it was not possible, as in South Tyrol for example, to give the discontented community a large degree of control over its own affairs under regional autonomy within the existing state boundaries. Nationalists in Northern Ireland have never demanded self-determination for themselves. Rather, their claim has always been to the whole territory of Northern Ireland, within which they are a minority.

Partition came at the end of a short but extremely violent struggle between Irish nationalism and the British Empire. At the time, and much more subsequently, it was highly romanticized and accorded heroic status. Just as David triumphed over Goliath, however, partition soured the victory. Nationalists on both sides of the border were left with unfinished business, an outsized sense of grievance, and a pantheon of violent heroes.

The idea that partition was morally unjust was sustained by the rhetoric of political leaders of the new Irish state and was formally enshrined in De Valera's 1937 Constitution, which defined the national territory as the whole island and asserted the right, in principle, of Dublin to rule over it. Inside Northern Ireland the persistent refusal of a large element of the national-

ist population to accept the legitimacy of the state, and the concentration of the political activity of this element on pursuit of the nationalist goal of Irish unification, helped to ensure the continuing division of politics in Northern Ireland along nationalist-unionist lines. This continuing division thereby ensured that nationalists remained a permanent political minority, who are excluded, essentially by their own choice, from a chance to share in government of the province.

In 1921 the new institutions in Northern Ireland, the regional government and Parliament began life under the fiercest onslaught from Irish nationalism, both within its own boundaries and from the rest of the island. The IRA sought to destroy Northern Ireland by bombing, burning, and killing. This campaign was backed by an economic boycott that Dublin organized, by non-recognition of the northern state by nationalists inside it and by the southern state, and by a sustained diplomatic and propaganda drive against Northern Ireland.

In these circumstances it was hardly surprising, though nonetheless regrettable, that the new Unionist Government in Belfast soon forgot the sentiments expressed in 1921 by its leader, Sir James Craig. He declared that the new executive and parliament had to govern "the whole people of the province," and that "the rights of the minority must be sacred to the majority, and that it will only be by broad views, tolerant ideas and a real desire for liberty of conscience that we here can make an ideal of the parliament and the executive."⁶

Instead, unionist rule in Northern Ireland became generally associated with intolerance and discrimination against the nationalist/Catholic minority. The New Ireland Forum Report of 1984 claimed that for fifty years nationalists had "suffered systematic discrimination. They were deprived of the means of social and economic development." Unionists were indeed guilty of various acts of discrimination and made little effort to draw the minority into the body politic. As David Trimble said in his Nobel Prize acceptance speech, they built a solid house, but it was a cold house for Catholics.

The evidence for the Forum Report's seeping generalization is, however, debatable and is hardly consistent with the pop-

6. Speech at the Reform Club, Belfast (Feb. 7, 1921), in DENNIS KENNEDY, *THE WIDENING GULF* 59 (1988).

ulation statistics of both parts of the island. Between 1926 and 1961, as the official census returns show, the number of Catholics in Northern Ireland increased by eighteen percent, while the total population increase was thirteen percent; over the same period the Catholic population of the South, hit by economic problems similar to those in the North, *declined* by almost three percent, and the Protestant population declined by thirty-seven percent. Numerous factors contributed to such statistics, but they do argue very strongly against any idea of the Catholics as a sorely-oppressed minority in Northern Ireland. Nevertheless, there was enough discrimination, coupled with the very public intransigence of many Unionist leaders, to make the minority's perception of itself as exceedingly hard done by a serious and seemingly permanent factor in the problem.

The perception persists that the problem in Northern Ireland lies essentially in the denial by the majority of civil or even human rights to the minority. The fact that the current troubles began in the 1960s in the context of a civil rights campaign has fixed this in the popular mind. But the civil rights demands of the 1960s were very limited, and specific grievances were met almost in their entirety within a very short period. Since the suspension of devolved government in 1972, unionists have been excluded from exercising any governmental power at regional level.

The sense of historic grievance over partition and of nationalists as a persecuted minority were married in one key assertion of the New Ireland Forum, which demanded for nationalists in Northern Ireland *the right to political expression of their Irish identity*. This demand was made in the context of allegations of denial of civil rights in Northern Ireland, with the implication that this was also a basic right. In fact, as a careful reading of the Forum Report makes clear, it is a new formulation of a basic nationalist demand, *political expression* meaning not just the freedom to campaign for Irish unity, but the right to be associated in some way with the independent Irish state, and indeed to be part of it. This is a formulation that finds no echo in international agreements on individual rights or on the treatment of minorities. The Council of Europe's Framework Convention for the Protection of National Minorities, which entered into force in February 1998 and is probably the most comprehensive internationally-

agreed-upon statement of individual and group rights of minorities, contains nothing remotely akin to it.

The New Ireland Forum Report of 1984 was hailed as a comprehensive and intelligent presentation of the nationalist case, but it ignored the insights of the recent scholarship that had carried the writing of Irish history out of its outdated confines. At most, the Report conceded that the ideal of an independent Irish unitary state might not be a practical possibility, suggesting as alternatives a federal Irish state or joint British-Irish authority over Northern Ireland.

While Mrs. Thatcher initially, and abruptly, rejected all three options of the Forum Report, it soon became clear that the U.K. Government was increasingly prepared to accept at least the rhetoric of the nationalist case. In particular, the U.K. Government was prepared to satisfy the key demand of the Forum, that nationalists in Northern Ireland be given some means of expressing politically their Irish identity.

The right of the Irish Government to be consulted by London on Northern Ireland, and to some degree to act as a guarantor for the northern minority, had been conceded in the early 1970s. From that point on, the achievement of a Dublin-London consensus on Northern Ireland was a priority for all U.K. Governments. In the Anglo-Irish Agreement of 1985,⁷ Dublin's role as guarantor was formalized, and it was given a treaty-based right to advise on the internal administration of Northern Ireland and a set of institutions to enable it to do so.

The intellectual argument behind the Anglo-Irish Agreement was indeed related to the Forum's "right to political expression of an Irish identity." By giving the Irish Government a visible role, albeit advisory, in the administration of Northern Ireland through the Anglo-Irish Intergovernmental Conference and a physical presence in Belfast through the Anglo-Irish Secretariat, it was hoped that northern nationalists might indeed feel that they could now see their Irish identity expressed in the exercise of government.

Had the Anglo-Irish Agreement been accepted in Northern

7. Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Ireland, Nov. 15, 1985, U.K.-Ir., Cmnd. 9657, *reprinted in* TOM HADDEN & KEVIN BOYLE, *THE ANGLO-IRISH AGREEMENT* 15-48 (1989).

Ireland, and a power-sharing devolved administration set up in Belfast, some of these hopes might have been realized. For that to have happened, there would have had to have been more evidence that the agreement was indeed a settlement, rather than a stage in a process. Ambiguity in the wording of the two Governments' guarantee on the status of Northern Ireland, coupled with the failure to remove the territorial claim to Northern Ireland in the Irish Constitution, helped to convince the unionist majority, who had been excluded from any part in negotiating the Anglo-Irish Agreement, that a significant shift had been made towards affording Dublin joint responsibility for Northern Ireland.

Joint British-Irish authority over Northern Ireland has been advocated for many years, mainly by nationalists, and usually as an interim arrangement pending Irish unification. The SDLP put it forward in its policy document *Towards a New Ireland*, issued in 1972; it was one of the three options of the New Ireland Forum Report of 1984. The British Labour Party favored it in *Options for a Labour Government*, published in 1991, and it was spelled out in some detail as a solution in pro-Labour Institute for Public Policy Research document *Northern Ireland: Shared Authority*, 1993. The Cadogan Group pamphlet *Blurred Vision: Joint Authority and the Northern Ireland Problem*, 1994, discusses the issue.

A substantial majority within Northern Ireland unequivocally rejected the Anglo-Irish Agreement, and the envisaged cross-community devolved executive never came into existence. By the end of the 1980s, it was clear to both London and Dublin that the agreement was not going to solve the problem. Multi-party talks were resumed under Secretary of State Peter Brooke in 1991, and his successor Sir Patrick Mayhew in 1992, with the Dublin Government also involved; unofficially, talks began elsewhere between the Social Democratic and Labour Party and Sinn Féin, and between the U.K. Government and the Provisional IRA.

A major shift in the Government's approach to the problem had taken place. Until the late 1980s, the official policy, in both London and Dublin, had been to conduct a resolute security campaign against IRA terrorism, while at the same time seeking to isolate the terrorists by reaching a political accommodation with moderate, non-violent nationalism. The Anglo-Irish Agree-

ment had emerged from such an approach, with its immediate aim being to strengthen the SDLP in Northern Ireland against the advances of Sinn Féin. By the end of the 1980s, the goal of defeating terrorism had been effectively abandoned, and the push was on for a peace process that would include the terrorists and be based on inclusive negotiations involving Sinn Féin.

But if the Anglo-Irish Agreement was now seen not to be the answer, the Anglo-Irish consensus on which it was based was now officially espoused more strongly than ever. The search for a solution would still be pursued in seeking to accommodate the nationalist minority in Northern Ireland, not only by guaranteeing full protection of their rights within the British state, but also by further rhetorical concessions to the nationalist case and by more closely associating the Dublin Government in the administration of Northern Ireland. The analysis that the Cadogan Group and others were questioning was still the basis of policy.

By 1992, the U.K. Government was frankly admitting its neutrality on the constitutional future of Northern Ireland. It stood by its guarantee, included in the Anglo-Irish Agreement, that the status of Northern Ireland could change only with the consent of the people of Northern Ireland. In a key speech at Coleraine in December 1992, however, Sir Patrick Mayhew emphasized that the U.K. Government had no self-interest in Northern Ireland and was not pursuing any constitutional settlement of its own choice. Rather, the U.K. Government was simply seeking to facilitate the democratic will of the people of Northern Ireland on their own future.

This idea was later incorporated in the Downing Street Declaration as a statement by the British Government that it had "no selfish, strategic or economic interest in Northern Ireland" and caused great offense to the unionist majority, who saw it as a formal and outrageous disavowal by a democratic government of its responsibility towards its territory and its citizens. But what Sir Patrick was saying was little more than a blunter version of what had been reality for many years; Northern Ireland was part of the United Kingdom, not because the United Kingdom wished to exercise any historic claim to its territory, or because retention of it was central to the United Kingdom's vital interests, but simply because a majority in Northern Ireland wished to remain within the United Kingdom.

In large part, the speech was addressed directly towards the IRA, with the message being that the IRA's real quarrel was not with London, but with the people of Northern Ireland, that violence would never win Irish unity, but that Irish unity could certainly be discussed if the violence stopped. Sir Patrick described the aspiration to Irish unity as "no less legitimate" than the legal and constitutional reality of Northern Ireland within the United Kingdom. In short, the speech was an invitation to the IRA to end violence and to enter negotiations with Irish unity as part of the agenda, and with the U.K. Government remaining neutral on the constitutional issue.

The speech contained a reiteration of the Government's determination to combat violence. "It is, and will remain, the first priority of the Government to defeat terrorism," declared Sir Patrick, quoting his predecessor, Peter Brooke. He then added his own assurance that there could be "absolutely no question of our dealing, directly or indirectly, with anyone who still espouses violence." What Sir Patrick knew, but was not saying, was that his government had, in fact, been dealing directly with the IRA and Sinn Féin for about three years in search of a way of ending violence. The peace process, initiated publicly by John Hume and Gerry Adams, and secretly by the U.K. Government and the IRA, was under way.

A sea of change in Government policy had taken place. The priority was no longer the defeat of terrorism but the achievement of an IRA cease-fire through discreet courtship of Sinn Féin and the IRA. The very term "peace process" was an indication that negotiation with terrorism was now at the heart of policy—after all, the only war going on was between government and society on the one hand, and the terrorists on the other.

This change of direction required a change of script for many participants, and presented formidable challenges to those, like the Cadogan Group, who were already challenging the intellectual honesty of the existing established bilateral London-Dublin policy centered on the Anglo-Irish Agreement. Government was now openly accepting the traditional nationalist claim to Northern Ireland at face value, and according it a worth fully equal to that of the existing constitutional arrangement. There was also further acceptance of the nationalist version of Northern Ireland as a one-party state within which nationalists or Catholics were a persecuted minority to such an ex-

tent that they could never be fully reconciled to their position within the United Kingdom, and that the minimum that they could be expected to accept in the meantime was some form of Irish-British joint responsibility for Northern Ireland.

It was no longer politic for moderate nationalists, or the Dublin Government, to continue to dismiss the IRA as terrorists engaged in criminal violence. Nor was it politic for John Hume to say, as he had frequently in the past, that there was no cause in Northern Ireland worth a single life. The message now was that the IRA goal of Irish unity was worthy and realizable, but that its methods were wrong. The sharp division between non-violent nationalism and Republican terrorism became blurred within a pan-nationalist front campaigning for "rights" and "equality," the achievement of which would help to satisfy legitimate nationalist aspirations and to remove the need for violence.

One astute Dublin-based observer, and former participant in policy formation, was quick to seize upon the significance of the Coleraine speech when he commented that this was the right time for a "concentrated negotiation of a definitive solution in which the inequalities and wrongs which burden the minority (so usefully acknowledged by the Secretary of State) are manifestly on the way to correction."⁸ In fact, the Secretary of State had not referred to any "wrongs" suffered by the minority. He did refer to economic and social disadvantages in employment, educational under-attainment, and poor housing conditions affecting both Protestant and Catholic communities. These bore more heavily on the Catholic community, "for a variety of complex reasons having their roots deep in the past." He talked of issues relating to the administration of justice and policing strictly in the context of the abnormal situation arising from the terrorist campaign, inferring that normality would automatically return with the end of terrorism. He spoke more than once of a desire to meet the wishes of the nationalist or Catholic community, and a main theme of the speech was the Government's commitment to affording equal recognition to the identities of each of the two communities.

These he had already defined as national identities, Irish or British, or as identities of allegiance to the Irish or British states.

8. Michael Lillis, *IRISH TIMES*, Dec. 30, 1992, at 9.

Not only would these identities have to be afforded equal legitimacy, but also they would have to be given appropriate expression in whatever new arrangements were made for governing Northern Ireland. Just how appropriate expression of allegiance to another state could be given to residents of the United Kingdom without any change in the constitutional status of Northern Ireland, Sir Patrick did not explain. But the wording was very close to that key demand in the New Ireland Forum Report for "political expression of an Irish identity."

The agenda, therefore, was set for the ensuing period and for the resolution of the problem. It was to be a "peace process," with its main thrust as persuading the terrorists, the defeat of whom was still supposed to be the Government's main priority, to desist from violence and to pursue Irish unity by peaceful means. Its other themes were to be accommodation of nationalist demands and aspirations in terms of allowing political expression of their Irish identity, and second, taking on board the more specific complaints of nationalism, particularly of Republicanism, regarding equality, administration of justice, and policing. All this was against the background of the continued guarantee that the constitutional position of Northern Ireland could not change without the support of a majority in the province. Some five and a half years later, that agenda produced this approach of May 13, 1998.

As a political strategy, at least in the short to medium term, this approach had much to commend it to those in government. It took account of the now publicly admitted inability of the security forces to defeat the IRA, and also of the difficulties caused to the IRA by war-weariness and some division among its supporters. It ensured continued full cooperation on Northern Ireland with the Dublin Government. It seemed likely to win enthusiastic backing from moderate nationalism and from the wider community in Britain, the United States, and the European Union. It offered the possibility of finally taking the gun out of Irish politics by including the IRA itself in a negotiated end to an unprecedented two decades of violence.

It also allowed the two Governments off the hook of unionist rejection of the Anglo-Irish Agreement. That Agreement would now go, to be replaced, or transcended, by a new agreement in the negotiation of which the unionists would be involved. And the trump card in that negotiation would be peace.

If the IRA could be persuaded to deliver a cease-fire, then enormous pressure would come to bear on the unionist parties not to reject peace.

It was at that point, in late 1992, that the Cadogan Group's first pamphlet appeared. This pamphlet was sharply critical of the government policy of seeking to accommodate the *political* aspirations of nationalism, and of the seemingly widespread acceptance in London, Dublin, and elsewhere, that partition had been somewhat unwise and immoral and that nationalists had been an oppressed minority who still suffered much injustice. It argued, on the basis of recent research and statistical evidence, that while there had been discrimination against Catholics under unionist rule, there was no evidence of widespread and systematic discrimination and that the "nationalist nightmare" was a politically-motivated myth. It was also critical of the early peace process under which John Hume of the SDLP had commenced dialogue with the representative of terrorism, Gerry Adams, and also under which democratic governments in London and Dublin were preparing to negotiate, or were already negotiating, with minority terrorist groups that they had long vowed to pursue relentlessly.

Like a growing number of distinguished individuals in Dublin and London, the Group was arguing from principle, from the lessons of history, and from the experience of post-war Europe, that the nationalist case was intellectually and historically unsustainable. Furthermore, the Group was arguing that the problem was best tackled according to the established European pattern of regarding borders as fixed and devoting best efforts to accommodating minorities within those borders, with the fullest possible guarantees of civil rights. Far from doing that, official policy on Northern Ireland seemed to be encouraging hopes and fears of Irish unification, thereby guaranteeing continued instability, not settlement, and seriously exacerbating relations between the two communities.

This was not to argue that the minority problem in Northern Ireland was sufficiently straightforward that resolute confirmation of the constitutional *status quo* was all that was needed to settle the issue and to persuade the minority to reach a *modus vivendi* in the state in which they found themselves, as had happened in many similar situations across Europe. For the reasons outlined earlier, Northern Ireland was somewhat different, and

added to those factors was the size of the disaffected minority within the disputed territory and the length of time that disaffection had persisted. There was, therefore, a need for imaginative, innovative, and perhaps unique approaches. Thus, the Cadogan Group accepted that a return to simple majority rule in Northern Ireland was not possible and that the nationalist minority had to be guaranteed a share in the exercise of authority. There was also a recognition of the importance of the "island dimension," particularly to nationalists—the identification with the island of Ireland, the common history and culture that all inhabitants of the island shared, and the need to take account of this in any settlement. A considerable degree of Irish unity exists; many bodies, including all churches, are organized on an all-Ireland basis. Unionists, while rejecting Irish nationality in the political sense, have little difficulty belonging to a variety of clubs, teams, churches, and professional bodies, the Irishness of which lies in their organization on an all-Ireland basis. The challenge was to persuade nationalists that their Irishness could find adequate expression in many ways other than living within an independent Irish state, or having that state share authority over Northern Ireland.

The internal contradictions implicit in official policies emerged again December 1993 when the two Governments sought to draw all parties into negotiation through the Downing Street Declaration. Once again Irish unification was discussed as a real possibility, with a joint promise to facilitate it if consent is forthcoming inside Northern Ireland, alongside the guarantee that there could be no change in the constitutional status of Northern Ireland without majority consent, the latter provision making the former impossible. The whole thrust of the Declaration is to promote agreement "in Ireland" and among the peoples "of Ireland." The fundamental principle of Irish nationalism, the "democratic right of self-determination of the people of Ireland as a whole," is asserted, unchallenged, in the document by the Taoiseach. The principle was, however, qualified immediately by his acceptance that it must be "achieved and exercised with and subject to the agreement and consent of a majority of the people of Northern Ireland." Thus, the intellectually indefensible concept that the people living on the island of Ireland constitute one nation and therefore have a collective right of self-determination is accepted in principle, only to be effec-

tively denied by the accompanying qualification that it can be exercised only in the restricted manner prescribed. The politician, desperately seeking short-term resolution of contradictory aspirations, will defend the pragmatism of such a course; the analyst, seeking to articulate fundamental principles as the best bases for real settlement, will point to the weaknesses and inherent dangers of such formulations.

Peace of a sort came with the paramilitary cease-fires of the second half of 1994, followed by renewed concentration on bringing all parties, including the representatives of terrorism, into a round-table negotiation. The two Governments' Frameworks proposals of 1995 were intended to provide the agenda for such talks.

These proposals contained the familiar mixture of concessions of principle and language, circumscribed by modest practical proposals. The Cadogan Group was unenthusiastic, declaring the Frameworks to be vague, confusing and mistaken, and in parts unworkable.⁹ While critical of the practicality of many of the proposals and of the rhetorical concessions made to nationalism, the Group was not totally dismissive of the Frameworks. The Group conceded that the Frameworks could provide a starting point, a focus for discussion, and that, sufficiently modified, they might offer hope as a basis for a settlement.

The Group criticized London for allowing its policy to be driven by short-term considerations and for relying on ambiguity to help to maintain the paramilitary cease-fires. The Group also warned both Governments that they should be aware of the damage that could be done to the long-term prospects for a real settlement by fudging or bending principles in order to dissuade extremist groups from returning to violence. "Appeasement now may well help to preserve the peace of the cease-fires, but could, in the longer term, make the achievement of a permanent settlement much more difficult, having, meanwhile, gone some way to illustrating that violence pays, even if payment is delayed until the guns are silent."

The refusal of the paramilitaries, particularly the IRA, to contemplate the surrender of their arms, now proved a major

9. *Lost Accord: The 1995 Frameworks and the Search for a Settlement in Northern Ireland* (visited Jan. 31, 1999) <<http://www.cadogan.org/cadogan/pamps/accord.html>> (on file with the *Fordham International Law Journal*).

obstacle to the opening of round-table talks. It was at this point, in November 1995, that Sen. George Mitchell entered the scene. He was named as chairman of an international body to consider the decommissioning of illegally held arms, with a deadline to report by the end of January 1996. The very term "decommissioning," chosen by the two Governments, was a substantial concession to the terrorists and set the tone for Senator Mitchell's involvement. He was brought in as a professional facilitator, a broker who could find a formula to get all the parties to the table.

The international body reported in January 1996, and its findings were immediately accepted by the two Governments and were to form part of their peace strategy right up to the Belfast Agreement of May 1998—as indeed, was Sen. Mitchell himself. But the Mitchell Report was seriously flawed. The key question that the international body was required to answer was whether the terrorists, particularly the IRA, were clearly committed to giving up their illegally held arms. If they were, then a method could be devised to allow this to happen, which would open the way for inclusive negotiation. In short, were the IRA now ready to give up violence and to espouse peaceful means only; if they were, then the problem of disposal of their weapons could be worked out.

The Mitchell answer was that there was "a clear commitment (on the part of the paramilitary groups) . . . to work constructively to achieve full and verifiable decommissioning as part of the process of all-party negotiations."¹⁰ In reaching this decision, the international body cited the fact that the paramilitary cease-fires had been in operation for a year and a half. The report containing that statement was published on January 22, 1996. Barely two weeks later, on February 9, the IRA announced its cease-fire was over and detonated a massive bomb in London's docklands that killed two people and caused damage worth more than US\$100 million.

Even allowing for the careful wording of the Mitchell Report—that the commitment was to "decommissioning as part of the process of all-party negotiations," which had not yet begun—the resumption of violence made nonsense of Mitchell's conclu-

10. International Body on the Decommissioning of Arms, Report of the International Body, Belfast, Dublin, Jan. 22, 1996.

sion that the IRA had a clear commitment to giving up arms. The citing of the continued cease-fire as evidence of this commitment looked particularly foolish when it was realized that while Mitchell was reaching his conclusion, the IRA was actually planning its resumption of violence and beginning the process of placing the bomb.

But not even the resumption of IRA violence could shake the faith of the two Governments in inclusive negotiations with the terrorists at the table. Nor could the violence shake the faith of Senator Mitchell, who was invited back in July 1996 to accept the role of chairman of plenary sessions in multi-party talks. His appointment signalled the two Governments' determination to see the talks to a conclusion. Senator Mitchell was deemed independent, in that he had no previous involvement in Ireland and no specialist knowledge of Irish affairs. His task was not to help to explore the subtleties of the Irish problem, but to be a technician and a ringmaster who would drive the participants to an agreement within the narrow confines already determined. Indeed, increasingly from this point on, there was no room in the talks process for any real debate about the causes of the division in Northern Ireland or of the fundamental roots of the problem.

By the time the Group's next pamphlet appeared, in October 1996,¹¹ elections to a consultative forum had taken place in Northern Ireland. An inclusive talks process had begun, albeit somewhat fitfully, with Sinn Féin excluded because of the IRA's return to terrorism. As it had become increasingly obvious that both Governments were determined to include Sinn Féin in the process, at almost any price, the Group's main target in *Square Circles* was appeasement of terrorism. Reviewing the evolution of policy over the previous four or five years, the Group commented:

Under cover of the general euphoria surrounding the "peace process" the essential character of dialogue in Northern Ireland had changed. What had been a search for a political accommodation between the broad strands of nationalism and unionism became more a negotiation between militant

11. *Square Circles: Round Tables and the Path to Peace in Northern Ireland* (visited Jan. 31, 1999) <<http://www.cadogan.org/cadogan/pamps/square.html>> (on file with the *Fordham International Law Journal*).

nationalism and the British state. The imperative of ensuring that the cease-fire was maintained, or once broken, reinstated, dominated all other considerations, and threatened to move matters to the plane the IRA and Sinn Féin had always been seeking - that of a peace conference, an exercise in "conflict resolution" to end hostilities between two sides which had been pursuing their legitimate aims (legitimate in their own eyes) by force of arms. The closing of nationalist ranks, including the Dublin Government, SDLP and Irish-America behind Sinn Féin in pressurising the British Government to accommodate Republican demands, meant the broader dialogue on a settlement in Northern Ireland was submerged in "conflict resolution" between a minority terrorist group and the British state. The most damaging result of this, and the one precisely desired by Republicans, has been a post-facto legitimising of IRA terrorism. A small group long denounced by the Irish Government, moderate nationalists and many others, as ruthless and mindless terrorists who must be suppressed, are now dignified as essential interlocutors, without whom dialogue is not worth a penny candle.

The pamphlet accused the U.K. Government of blurring essential democratic principles in its desire to keep Sinn Féin and the IRA aboard the peace process. Efforts to restore the IRA cease-fire had come close to open appeasement, and the government was seeking to pressure local democratic parties to negotiate directly with the representatives of armed terrorists. It was difficult to see how such moves could end other than in failure.

Nine months after that was written, an IRA cease-fire was again in place, and after a further nine months, multi-party agreement was reached, with Sinn Féin on board alongside the political representatives of Loyalist terrorist groups. In Ireland, some prominent commentators who had been critical of the peace process publicly apologized and said that they had got it wrong. Between the conclusion of the Belfast Agreement and the holding of the referendums on it, the Cadogan Group published a pamphlet¹² neither backing nor rejecting the deal. Instead, it set out four distinct commentaries examining various aspects of the agreement. During the referendum campaign

12. *Rough Trade: Negotiating a Northern Ireland Settlement* (visited Jan. 31, 1999) <<http://www.cadogan.org/cadogan/pamps/rough.html>> (on file with the *Fordham International Law Journal*).

and since, some individual members of the group have been enthusiastic supporters of its implementation, while others have continued to oppose it.

Such positions result from personal decisions on current political options. The principles that the Group has sought to articulate over the years continue to unite it, even though the individual application of those principles allied to tactical considerations has resulted in opposing stances. This paradoxical situation may be easier to understand if one takes account of the remarkable similarities between the practical proposals of the Belfast Agreement and the suggestions put forward by the Cadogan Group in its first pamphlet in 1992.

The Group then argued for a settlement based on the principle that constitutional change in Northern Ireland could come about only with consent; Articles 2 and 3 of the Irish Constitution had to be changed to end the territorial claim, and the Anglo-Irish Agreement had to be replaced. It proposed a power-sharing executive in Northern Ireland guaranteeing the minority a place in government, and special measures to recognize and to remedy the disadvantaged position that the minority community found itself in as regards, for example, employment. The Group proposed a new Cooperation Agreement with Dublin, which would have a North-South Ministerial Council to promote maximum cooperation between the two parts of Ireland. It suggested a Bill of Rights for Northern Ireland and proper consideration for minority concerns. It proposed some institutional recognition of the oneness of these islands, not unlike the British-Irish Council of the Belfast Agreement.

In many respects, the Belfast Agreement represented a significant scaling down of what had been proposed in the Frameworks in 1995, notably as regards rhetoric, cross-border bodies and relations with the European Union. All of these aspects had been sharply criticized by the Group in *Lost Accord*.

What, then, if anything, is wrong with the Belfast Agreement? The unease shared by Group members who support the Agreement and by those who do not has three main causes. The first relates to the circumstances in which the Agreement was reached. The second concerns the rewriting of recent history and the debasement of language that is involved. The third is that the Agreement entrenches rather than challenges the myths

and misconceptions that have long underlain the divisions in Northern Ireland.

No democrat can be happy with the large degree of appeasement of terrorism that underlies the Agreement. The pursuit of a settlement inclusive of people long denounced as terrorists with no place in civilized society was based on the belief that these terrorists could not be defeated. For almost a decade now, the new consensus has been to persuade the terrorists to move away from terrorism, to negotiate with them, to treat them with a measure of respect, almost as honorable, if mistaken enemies to be accommodated, not defeated. This is appeasement.

The pursuit of peace is the highest of goals. If it can be achieved, even with a measure of appeasement, then it is worthwhile. This is the strongest argument for the Belfast Agreement. It still leaves the appalling truth that in the second half of the twentieth century a small subversive group ready to employ ruthless terror against the civilian population cannot be defeated in a democratic society where it commands only tiny minority support. Taking the context of the island as a whole, two democratic legitimate governments have been forced to reach an accommodation with an extreme Republican movement never enjoying as much as five percent support on the island.

Many defenders of the Agreement, and some of those who helped to negotiate it, recognize that. Their argument is that peace has been bought, and that the price paid in actual concessions has been modest. Republican terrorists have settled, not for a united Ireland, but for a place in the sun, prisoner release, and seats in a partitionist Assembly and Executive.

But part of the price has also been a blatant re-writing of history. The consensual distortion of events and of language that is now deemed a necessary part of the peace process is more of a problem than some of the actual concessions. Thus, terrorists are to be allowed, it would seem, to hold on to illegally held arms and explosives for an interim period while their representatives are installed in government; they are not required to surrender such arms, but to decommission them over a prolonged period. It is now forgotten that the Mitchell Report recommendation was that decommissioning should take place *during* multi-party negotiations, not before or after them. In fact, no arms were given up during negotiations. None, apart from a

very small loyalist consignment, has been given up during almost one year of implementation of the Agreement, and the IRA continues to say it has no intention of giving up arms.

The terrorists' representatives also talk of "equality"; they present their terror as an armed struggle in pursuit of an equality, which has been denied them, and by implication denied to the entire nationalist population in Northern Ireland. The Agreement, with its vague use of the term "equality" and the ill-defined concept of parity of esteem, again surrenders terminology not just to the terrorist, but to a particular and highly contestable understanding of the whole problem. In what sense has equality been deliberately denied to anyone in Northern Ireland? Only the ideologue nationalist who believes that Northern Ireland has no right to exist can believe that he has been unjustly denied his place in society.

Many of these concessions of language and rhetoric have been described as "necessary nonsense" or small ground given in return for what amounts to a *de facto* surrender and an acceptance, in the main, of the constitutional *status quo*. There is much in that argument, but it still rewards the terrorists for agreeing to stop using terror, and by implication accepts that they had a right to use it in the past. Convicted terrorists are released early, before arms are surrendered and without any acknowledgement of wrongdoing because it is "part of the agreement." This is not just morally distasteful, it is paying Danegeld.

The third concern is perhaps more fundamental. When the Cadogan Group published *Northern Limits* in 1992, its proposals for a solution, similar in many respects to the current Agreement, were based on one key foundation. This was the general acceptance, by all, that partition was *not* the root cause of trouble in Ireland, but a reasonable, even inevitable if untidy means of resolving the basic unionist-nationalist division among the people of the island. Any solution, therefore, had to lie in the direction of accepting the reality of partition, and seeking to ensure that all could live with it in maximum equity and contentment.

Such an approach goes beyond the consent principle, which essentially grants the right of self-determination to the people of Northern Ireland. But the approach only goes beyond the consent principle to the extent that it acknowledges the reality that

consent to Irish unity is not forthcoming, now or in the foreseeable future, and should not therefore be presented as a realistic option. But the Belfast Agreement deliberately avoids any such finality. As one academic commentator puts it, the beauty of the Agreement is that both nationalists and unionists have sound reasons for their respective assessments of its merits.¹³ That is, both can convince themselves that they have had the better of the bargain. It was that fact that was crucial in obtaining an agreement to which both unionists and Sinn Féin could assent. But securing agreement in the hot-house atmosphere of high pressure negotiation fast approaching, and even passing, a fixed deadline may not offer the best foundation for a permanent or even long-term settlement, particularly if principles are forgotten in the process.

For example, the new wording for Articles 2 and 3 of the Irish Constitution prescribed by the Agreement was meant to end the territorial claim and enshrine consent. But it removes only the explicit claim, leaving an implied one and much of the nationalist myth on which it is based. The name of the southern state remains Ireland, an implicit claim to the whole of the island. The revised Article 2 seeks to define the Irish nation as everyone born on the island. Article 1 continues to assert the sovereign right of this Irish nation to choose its own form of government. This is still the language of traditional nationalism, ignoring reality and asserting the right of the Irish "nation" to ownership of the island.

Central to the whole document is the concept of "separate but equal." Northern Ireland is deemed divided between unionists and nationalists, and from now on these two tribes must have equal say in everything. This is not just a question of equality before the law, or of equal rights to vote, or of freedom of religion, of expression, or respect for cultural identity, all of which already exist. This is a question of a basic equality between the political stances of unionism and nationalism, that is between accepting and supporting the existence of the state, and rejecting its legitimacy and seeking to dismantle it.

The hard-pressed negotiator, desperate for a formula that

13. Brendan O'Leary, *The Nature of the Agreement* (Nov. 26, 1998), John Whyte Memorial Lecture, Queen's University, Belfast. This lecture also forms the basis of Professor O'Leary's contribution to this present volume.

might be acceptable, may well seize upon such fudges and ambiguities. The analyst, or, for want of a better word, the intellectual, removed from the heat of negotiation, may be much more conscious of the contradictions involved, and of the bending, or setting aside, of truths and principles. It is his role in society to continue to reassert those principles and to warn the negotiators of the dangers of ignoring them.

Over the course of the peace process, those who have explored and articulated these principles may appear to have been against the process and to have been proved wrong in the end by the Belfast Agreement. But it could be that their contribution also helped to shape the Agreement, reducing the amount of nonsense that was deemed necessary and strengthening those voices arguing for a sensible approach to institutional innovation.

Their contribution may well be more important than ever in the implementation of the Agreement, as they continue to expose the distortions of history and language built into it. Many who voted for the Agreement did so with misgivings, but in the hope that the compromises and concessions that it contained would enable the extreme nationalists and terrorists to come to terms with the wrongness of their methods and allow a widespread re-examination of traditional political attitudes to begin. So far, this has not happened. Terrorist prisoners are released with no public, or private, admission that they were rightly imprisoned for appalling crimes. Spokesmen for terrorism, it would seem, may be about to take their seats in government while the terrorist organizations retain their subversive structure, their illegal arms, and their selective use of terror. In the near future it will be possible for many, particularly those outside Northern Ireland, to look back on the past thirty years and to reflect that it was tragic but necessary that so many had to die so that inclusiveness and equality could be enshrined in the Agreement.

That would be a tragic misreading of history, taken almost verbatim from the Sinn Féin script. It has been said that those who ignore history are forced to relive it. The danger now is that the terrorism of the past thirty years is being decriminalized. There is also the danger that the lessons drawn from recent history will be that the IRA emerged undefeated, that the armed struggle produced medium-term political victories by forcing

unionists into coalition with republicans and by winning many rhetorical concessions to nationalism.

These ambiguities, coupled with the exhaustion of the terrorists after thirty years, may produce some years of comparative peace in Northern Ireland. But the fear is that they may leave unimpaired the cult of physical force in Irish nationalism, and the belief among extreme loyalists that retaliatory violence is the only means to combat it. This must be considered within arrangements, which rigidify and institutionalize the dividing lines in society, in the softening of which must lie the real hope of settlement.

As the Northern Ireland problem has attracted more international attention, a growing "peace industry" surrounding it has stimulated a raft of suggestions and analyses deemed innovative and imaginative. Both local activists and observers from outside, mostly well-intentioned, have offered analyses and sought to draw parallels with other conflicts—South Africa, for example—that are impossible to sustain and that are, overall, unhelpful and misleading.

The most pernicious of these, perhaps, has been the European example, the constant assertion that the process of integration in Europe, and in particular the principles and mechanisms of the European Union, offer a pattern for reconciliation in Ireland, and indeed for some form of Irish unification or joint sovereignty. The European Union certainly has enabled former enemies to live together in peace, and its Member States share their sovereignty to a considerable degree in common institutions. But the European Union is a community of Member States, all of which entered willingly into the treaty arrangements governing the Union, and within which all share sovereignty to the same degree. In the case of the Anglo-Irish Agreement, or in various scenarios for joint-authority, there is agreement between two units, the British and Irish Governments, on how they together will run one small area, Northern Ireland. Northern Ireland, however, was not consulted over the arrangements, and within it a majority has repeatedly said it does not accept them.

A genuine application of the European Union model to the Northern Ireland problem would have to involve the two states, the two islands, and all the distinct regions, with a sharing of sovereignty all around, and with the ultimate goal of political

union of all parts. That is, there would have to be a recreation of the union between Great Britain and Ireland. In this, as in other instances, it is difficult to avoid the conclusion that the SDLP and the Dublin Government have embraced such arguments mainly to cloak old-fashioned and unsustainable claims in a veneer of modernity and internationalism.

In the drama of the search for peace in Northern Ireland, the Cadogan Group has been a bit player, if that. The purpose of this Essay is not to give it significance, or even to justify its views. The purpose is to reflect on the importance in any such situation of individuals and groups ready to try, on the basis of individual judgment and some scholarship, to assert basic principles and to seek to focus attention on the fundamentals, to question received wisdom, and to subject the consensus bandwagon to rigorous testing.

Politicians and negotiators may need recourse to some deceit and much glossing over of history to bring all parties around a table and to persuade them within a given time to assent to a set of proposals. But unless the deceit and the glossing over are continually challenged, agreement is unlikely to evolve into settlement.